Supreme Court of the United States

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. THOMAS M. JETT.

No. 696.

BRIEF OF PLAINTIFF IN ERROR.

I. *Statement of the Case.*

The state of Illinois, by Thomas M. Jett, state's attorney, filed the following petition for a mandamus in the circuit court of Montgomery county, Illinois. (See Record, p. 11.)

"The petitioner, Thomas M. Jett, state's attorney in and for said county, who sues for the people of the state of Illinois in this behalf, comes into court here and in the name and by the authority of the people of the state of Illinois, gives said court to understand and be informed that the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, an incorporated company, for several years last past, has been operating and is now operating a certain railroad, which is

located and extends from the city of St. Louis, Missouri, across the said county of Montgomery, and through the corporate limits of the city of Hillsboro, in said county, to the city of Indianapolis, in the state of Indiana.

"The petitioner further gives said court to understand and be informed that said railroad has been located and operated across said county, and through the corporate limits of said city for a long space of time, to wit: forty years, and during all that time the company operating said railroad has kept and maintained a railroad station or depot within the corporate limits of said city, where its passenger trains have been accustomed to stop to take passengers on and to discharge them from its trains.

"The petitioner further gives said court to understand and be informed, that said city of Hillsboro, through which said railroad runs, as aforesaid, is now and for many years last past, to wit: seventy years, has been the county seat of said county of Montgomery, and that by the statute of the state in such case made and provided, it is made the duty of the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company to stop all regular passenger trains by it run over and upon said railroad, at said railroad station, on said railroad, situated within the corporate limits of said city, as aforesaid, a sufficient length of time to receive and let off passengers with safety; yet, notwithstanding its said duty in this behalf, the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company has for several weeks last past, knowingly, willfully and continuously run, and is now running, a regular passenger train or trains designated by said company the 'Knickerbocker special' twice each day, by and through said railroad station, situated within said city, as aforesaid, and through the corporate limits of said city at a great rate of speed, to wit: at the rate of fifteen miles per hour, without stopping said trains or either of them at said railway station, so that passengers can get on and off said trains, contrary to the provisions of the statute aforesaid, and against

the peace and dignity of the people of the state of Illinois.

"The petitioner further gives the court to understand and be informed that said railway company runs said 'Knickerbocker special' regular passenger train by and through said railway station without stopping and at the great rate of speed aforesaid from east to west at about the hour of 4 o'clock A. M. of each and every day, and runs said 'Knickerbocker special' regular passenger train by and through said railroad station without stopping and at the great rate of speed aforesaid from west to east about the hour of two o'clock P. M. of each and every day.

"The petitioner further gives said court to be informed and understand that said railway company is now running its said regular passenger trains as aforesaid, and he has every reason to believe and does believe, and so states the fact to be, that said railway company will continue to so run its trains and so continue to disregard its said duty unless it shall be compelled to stop said trains at said railroad station within the corporate limits of said city by the mandate of this court.

"Wherefore the petitioner prays a writ of mandamus directed to the said The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, commanding it forthwith to stop its said regular passenger trains, by it designated the 'Knickerbocker special,' as aforesaid, at said railroad station of said railway company located within the corporate limits of the city of Hillsboro, a sufficient length of time to receive and let off passengers with safety, as by the statute in such case made and provided said railway company is commanded to do, and that such further and other orders may be made and entered in the premises as justice may require."

The plaintiff in error filed the following answer. (See Record, p. 21.)

"Answering the petition filed herein by Thomas M. Jett, state's attorney in and for said county, who sues for the people of the state of Illinois, the defendant,

The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, admits that it is an incorporated company, and avers that it was incorporated under the laws of the states of Ohio and Indiana, and admits that for several years last past it has been and now is operating a railroad extending from the city of St. Louis across said Montgomery county and through the corporate limits of the city of Hillsboro, in said county, to the city of Indianapolis, Indiana, and through the state of Indiana and the state of Ohio to Cleveland, in the last named state, where it connects with the Lake Shore and Michigan Southern railroad, extending from the city of Cleveland to the city of Buffalo, New York, and there connecting with the New York Central and Hudson River Railroad extending from the city of Buffalo, in the state of New York, to the city of New York, in said state.

"Respondent further admits that said railway has been operating and now operates through the corporate limits of the city of Hillsboro; that it has kept and maintained a railroad station or depot within the corporate limits of said city of Hillsboro for a long time. It further avers that during all the time such railroad has been operated by this respondent it has furnished and now furnishes a sufficient number of regular passenger trains to accommodate all the local and through business along the line of its road, and especially all the local and through passenger business arriving at or destined for the city of Hillsboro; that its regular passenger trains engaged in carrying the local and through business have all stopped and do now stop at the station of the company in the city of Hillsboro. It further shows that no passenger trains have been taken off; that the same regular passenger trains which have run over said road prior to the putting on of the Knickerbocker special referred to in the petition filed against the defendant still run over said road and still stop at Hillsboro a sufficient length of time to enable all passengers to get on or off said trains with safety.

"Respondent further shows that such regular passen-

ger trains have been running for a long time over said road, and have been and now are ample and sufficient to accommodate the public and all the business along its line in the state of Illinois, and to furnish convenient and ready facilities for travel to the said people of Hillsboro and from the various points over said railway and to points beyond the lines of said railway, without delay, by the connections of said trains, and affording ample facilities for travel to all persons desiring to travel to and from Hillsboro.

"Your respondent further shows that the Knickerbocker special referred to in the petition filed against it is a special train especially devoted to carrying interstate transportation between the city of St. Louis, in the state of Missouri, to the city of New York, in the state of New York, both of which cities are without the limits of the state of Illinois; that prior to the putting on of such trains there was an urgent demand on the part of the through traveling public—that is, people desiring to go from said city of St. Louis to said city of New York and other interstate eastern points—for a through special fast train leaving St. Louis at noon and arriving in New York about six o'clock P. M. the day following its departure from St. Louis, and that this travel so desiring said train between the said cities has grown to such an extent that in order to satisfy and accommodate its requirements it became necessary for this defendant to put on this through fast train, called the Knickerbocker special, which leaves St. Louis daily at noon and connects with other through fast trains on the Lake Shore and Michigan Southern Railroad and New York Central and Hudson River Railroad and arrives at New York about six o'clock P. M. the day following its departure from St. Louis, thus making a fast through line from St. Louis to New York; and defendant avers that it was necessary to put on this train because the trains heretofore on said road and which still continue to run and stop at Hillsboro and other way stations could not and can not, by reason of such stops, make the time required by the through travel in order to make the said eastern connections,

and could not carry passengers from the city of St. Louis aforesaid to the said city of New York aforesaid within the time which the said demands of business and said passengers and interstate commerce required and does still require.

"Your respondent further shows that said train is not a regular passenger train for carrying passengers from one point to another point in the state of Illinois, but that such traffic is already amply and sufficiently provided for by the other trains passing over its road, and this Knickerbocker special train is run and used exclusively for interstate traffic from points wholly without the state of Illinois to points wholly without the state of Illinois, and is engaged exclusively in interstate commerce, and is not subject to regulation by the statute of the state of Illinois, providing that all trains shall stop at county seats; that to subject this train, engaged exclusively in interstate commerce, to statutory regulations of the various states through which it passes, requiring it to stop at county seats or way stations, would wholly destroy the usefulness of this train, would damage the passengers whose business necessities demand its being put on, would prevent them from making connections with other trains, and would impede and obstruct interstate commerce.

"Your respondent further shows that if said train is required to stop at the county seats in the state of Illinois and other states through which said through train passes and must run, that your respondent will be compelled to abandon said train; that it could not then be run as a fast through train solely for interstate transportation, which was and is the sole purpose and object of said train, and that said traveling public which has and does demand that said train shall leave St. Louis at noon and arrive in New York at about six o'clock P. M. the following day, will be greatly damaged and deprived of said train and its connections, and the stoppage of said train will cause great and serious detriment and damage to this defendant and the several persons who had or would pay their

fares for through transit from said city of St. Louis to said city of New York, and from said city of St. Louis to said cities of Indianapolis, Cleveland, Buffalo, and other cities east of Buffalo.

"Your respondent further shows that no tickets are sold for and no passengers received on said special Knickerbocker train, which is devoted exclusively to interstate commerce, from points in Illinois to points in Illinois, and that said Knickerbocker special train makes no stops in the state of Illinois for passengers—makes no stops in the said state of Illinois, except at railroad crossings, where there is no interlocking device, for fuel, water, or for necessary orders, and if it is required to make any other stops, and required to stop at Hillsboro and other county seats, it can not make the connections it now makes, nor the time which it now makes and which said public travel demands, and that it will have to be abandoned, to the great damage and irreparable damage and injury to this defendant and to all the through traveling public desiring to go from St. Louis, Missouri, to the city of New York.

"Your respondent admits that the city of Hillsboro is the county seat of Montgomery county, and shows that it has a population of only twenty-five hundred people, and that there are now and have been for some time and were at the time of the commencement of this suit four regular passenger trains each way every day passing through said city, which stopped at the station in said city a sufficient length of time to allow passengers to get on and off said trains, and that in addition to said regular passenger trains there are various local freight trains upon which passengers can ride to and from said city of Hillsboro, and that said regular passenger trains, together with said local freight trains, amply accommodate the travel to and from Hillsboro and afford every reasonable facility to travel to and from said city at reasonable hours, two of said passenger trains passing through said city going west to St. Louis in the morning at reasonable hours, and two of said regular passenger trains going west to St. Louis

passing through said city in the afternoon at reasonable hours, and two of said passenger trains going east from said city of St. Louis to Indianapolis and eastern points pass through said city at reasonable and timely hours in the morning, and two of said trains going east pass through Hillsboro at reasonable hours in the evening, and said local freight trains are run to accommodate the traveling public going to and from said city of Hillsboro.

Your respondent avers and further shows that the said supposed law and statute of the state of Illinois upon which this proceeding is based is null and void so far as it pertains to the regulation or stopping of this Knickerbocker special train, because the regulation of interstate commerce is exclusively within the power of congress under the constitution of the United States, and no state law can be passed to regulate or control trains engaged in interstate commerce and compel them to stop at county seats or way stations.

"Wherefore the defendant prays that said petition may be dismissed, and that this defendant, having fully answered, may have judgment for its costs and all proper relief."

The court sustained a demurrer to this amended answer. (See Record, p. 27.)

"To which ruling of the court, in sustaining said demurrer to said answer and holding said answer insufficient, the defendant at the time by its counsel excepted, and thereupon the court required said defendant to further answer said petition, which said defendant declined to do, but stood by its said amended answer as presenting a full answer and defense to the said petition herein filed, and thereupon the court ordered and adjudged that the said Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the defendant, be and hereby is commanded to forthwith stop its regular passenger train, designated by it "the Knickerbocker special," being the train leaving St. Louis, Missouri, about noon each day and going east

through Hillsboro about the hour of two o'clock P. M., at the railway station and depot of the defendant, located within the corporate limits of the said city of Hillsboro, Montgomery county, Illinois, a sufficient length of time to receive and let off passengers from said train with safety as the law requires." (Record, p. 28.)

The case was carried to the supreme court of Illinois. The assignment of errors in that court was as follows (Record, p. 31):

Assignment of Errors in the Supreme Court of Illinois.

"Comes now the appellant, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and shows to the court that there is manifest error in this record in the following particulars, to wit:

"1. The court below erred in holding and finding that the respondent, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, could be compelled by the legislature of Illinois to stop at county seats in the state of Illinois trains engaged exclusively in interstate commerce, and in carrying through passengers from St. Louis, Missouri, to points east of the state of Illinois, and carrying no passengers between points within the state of Illinois, and in ordering the defendant to stop at Hillsboro, Illinois, its 'Knickerbocker special' trains, engaged exclusively in interstate commerce, and which carry no passengers between points within the state of Illinois, when other trains ample and sufficient to accommodate the business of Hillsboro and between points in Illinois and from points in Illinois to points without Illinois were provided by defendant, thereby holding, finding and decreeing that it was within the power of the state of Illinois to lay burdens and restraints upon interstate commerce and to regulate interstate commerce in matters not affecting the safety, convenience or welfare of the citizens of Illinois, in contravention of the constitution of the United States.

"2. The court erred in holding and finding that the legislature of Illinois, in the exercise of its police power, could lay burdens and restraints upon interstate commerce in particulars which do not affect the security, comfort, convenience, or welfare of the citizens of Illinois by compelling trains engaged exclusively in interstate commerce to stop at county seats in said state, when other trains ample and sufficient to accommodate all the travel between said county seats and other points within and without the state of Illinois were provided by said defendant, in contravention of the constitution of the United States.

"3. The court erred in sustaining a demurrer to the amended answer of the defendant.

"4. The court erred in rendering a judgment and awarding a peremptory writ of mandamus requiring the defendant to stop its regular through passenger train, designated by it as the "Knickerbocker special," being the train leaving St. Louis about noon each day and going through the town of Hillsboro about two o'clock P. M., at the railway station and depot of the defendant, located within the corporate limits of the town of Hillsboro, Montgomery county, Illinois, a sufficient length of time to receive and let off passengers from said train with safety, said train being engaged exclusively in interstate commerce and carrying no passengers between points in the state of Illinois or from points without the state of Illinois to points in the state of Illinois, or from points in the state of Illinois to points without the state of Illinois, thereby imposing restraints and burdens upon interstate commerce and assuming to regulate interstate commerce, contrary to the constitution of the United States.

"5. The court erred in rendering the judgment upon pleadings in favor of petitioner and against the respondent.

"6. The circuit court erred in not overruling the demurrer to the amended answer of respondent.

"7. The circuit court erred in awarding the writ of mandamus as prayed for in the petition of relator.

"8. The circuit court erred in awarding judgment against the respondent for the costs of this suit.

"9. The circuit court erred in holding the statute of the state of Illinois requiring all regular passenger trains to stop at county seats was valid, as the same, so far as it affects trains devoted solely to interstate commerce, is void and unconstitutional.

"10. The court erred in not carrying back the demurrer of petitioners to amended answer to the petition itself, and erred in not holding such petition insufficient.

"By reason whereof appellant prays that the said judgment may be reversed, etc."

The supreme court of Illinois affirmed the decision of the circuit court. The court in its opinion said (Record, page 37):

"Whatever is necessary to provide for the public welfare and the general security is within the police power of the government. Whether a particular regulation is a reasonable exercise of the police power is strictly a judicial question, but the law-making power is the sole judge of when the necessity exists, and when, if at all, it will exercise the right to enact such laws. * * * (Page 38.) This company can not, by its manner of doing business, escape state control and disregard a statute of the state which seeks to regulate and control domestic concerns within the limits of the state for the public welfare and general good. Appellant's 'Knickerbocker special' is not national in its character, requiring uniformity of regulations affecting all states alike. The Illinois act operates as a regulation of business within the state only. We hold this act is not an interference with interstate commerce, but a mere police regulation, applicable solely to the limits of the state of Illinois. It no more interferes with the expedition with which trains passing through the state carrying passengers from one state to another exclusively may reach their destination than does a regulation limiting the speed of trains running

through a crowded thoroughfare, and, like the latter regulation, is for the public welfare."

The assignment of errors in this court is as follows: (Record, p. 5.)

1st. The said supreme court of the state of Illinois erred in affirming the judgment of the circuit court of Montgomery county, Illinois.

2d. The said supreme court of the state of Illinois erred in holding that the statute of the state of Illinois requiring *all regular passenger trains* to stop a sufficient length of time at railway stations of county seats to receive and let off passengers with safety, was not in violation of the constitution of the United States.

3d. The said supreme court of the state of Illinois erred in holding that said statute was in force as applied to the special through interstate commerce train of the said plaintiff in error, known as the Knickerbocker special.

4th. The said supreme court of the state of Illinois erred in holding that the said statute of said state of Illinois requiring all regular passenger trains to stop a sufficient length of time at railway stations of county seats to receive and let off passengers with safety, as applied to through interstate special trains devoted exclusively to interstate commerce and running from the city of St. Louis, in the state of Missiouri, to the city of New York, in the state of New York, was not in violation of the constitution of the United States.

5th. The said supreme court of the state of Illinois erred in holding that such train was a train that could be regulated as to the manner and number of its stops by the state of Illinois, or any statute thereof.

And the said Cleveland, Cincinnati, Chicago and St. Louis Railway Company prays that the said judg-

ment of the said circuit court of Montgomery county, awarding the peremptory writ of mandamus herein, and the judgment of the supreme court of the state of Illinois, affirming the judgment of the said circuit court of Montgomery county, Illinois, may be reversed, annulled, and held for naught, and that it may be restored to all things which it has lost by occasion of said judgment.

II. *The Question Presented.*

The contention of plaintiff in error is:

1. That This Act of the Legislature of Illinois, in so far as it is Applied to Trains Engaged Exclusively in Interstate Commerce, the Convenience of the People of the State of Illinois Being Amply Provided for by Other Trains, is a Regulation of Interstate Commerce, Pure and Simple, and Wholly Without and Beyond the Scope of State Legislation.

It will be seen that by the averments of the answer which are admitted by the demurrer, that the plaintiff in error ran four trains each way daily through the state of Illinois, stopping at the county seat of Hillsboro and other stations; that these trains were ample and sufficient for the accommodation and convenience of all persons desiring to travel to and from the city of Hillsboro to or from points in or beyond the state of Illinois; that the special Knickerbocker train which the court required to stop at Hillsboro is a special through train devoted exclusively to interstate commerce; that it was put on to meet the requirements of interstate travel between the cities of St. Louis and

New York solely to gain the time which was consumed by the other through trains in making the stops, and thus make connection with other fast trains of the Lake Shore and New York Central; that it made no stop in the state of Illinois, except for crossings and to take fuel and water and to receive orders; that it carried no passengers to or from points in the state of Illinois. If the train was required to make the stops it would not add to the convenience of the people of Hillsboro or other county seats, which was already amply provided for by other fast trains which did stop, and it would be unable to make its eastern connections, and to make the time required by the convenience of persons traveling between St. Louis and New York.

The statute of Illinois under which it sought to regulate trains engaged exclusively in interstate commerce and compel them to stop at county seats, when the public convenience is already amply provided for by other trains affording ample facilities for travelers to and from county seats in Illinois, is as follows (Section 25, as amended April 1, 1887, Hurd's Stat. 1899, p. 1060):

"Every railroad corporation shall cause its passenger trains to stop, upon its arrival at each station advertised by such corporation as a place for receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: Provided, *all regular passenger trains* shall stop a sufficient length of time at the railroad station of county seats to receive and let off passengers with safety."

III. *Argument.*

The state may unquestionably, in the exercise of its powers of sovereignty, regulate and control the conduct of persons and corporations within its limits, but

all legislative acts must be subject to the paramount power of the constitution of the United States, and must not transcend the limits prescribed to state legislation by that instrument.

No question is raised as to the power of the state to legislate for the safety, welfare or convenience of all persons in its borders, but it can not, under the guise of legislating for the public welfare, pass laws which directly trench on the domain confided by the constitution exclusively to the congress of the United States.

The train which it is sought to regulate by an act of the legislature of Illinois is devoted exclusively to commerce among the states.

The averments of the answer, admitted by the demurrer, show that it was put on solely to meet the requirements of interstate travel between New York and St. Louis.

It was a fast through train between St. Louis and New York over the road of plaintiff in error and other roads. It did not stop in the state of Illinois, except for water or at crossings, or to receive orders. It carried no passengers from or to points in the state of Illinois. It was put on to save the time required to make stops, and thereby meet the necessities of through travel from St. Louis to New York. It left St. Louis at noon and arrived at New York about six o'clock the next day. If it was required to stop at all county seats through which it passed it could not make its connections, and would have to be taken off.

The averments of the answer admitted by the demurrer show that the convenience of the public was already amply provided for by four trains each way daily stopping at Hillsboro and other stations, and this special Knickerbocker was put on solely to meet the

necessities of commerce between St. Louis and New York, and to save the time required to make the stops made at county seats and other stations by the trains being then run.

The saving of the time taken by these stops between these cities was the only purpose of this train. If these stops could not be avoided, it could not make its connections with the L. S. & M. S. and New York Central, and would fail of its purpose and be discontinued. There were trains enough. They could not make the stops and the time too. It would not add to the convenience of Hillsboro or other county seats to compel this train to stop as the other trains did. If this train was compelled to stop as other trains it could not quicken the time, but it would impose a very great burden on interstate transportation.

There is no confusion in this case as to the limits or extent of the "police power." There is no question as to what is called "police power" in the case. There is no question even of the convenience of the public in Illinois. The averments of the answer show that the convenience of the people of Hillsboro and of Illinois are amply provided for by other trains.

While no question is here made as to the validity of this act, in so far as it regulates the running of trains engaged in transportation wholly within the state of Illinois, it can not be extended to regulate a train engaged exclusively in interstate transportation. Such regulation is wholly without and beyond the domain of state regulation.

It will be seen at once that if the legislature of Illinois has power to require trains engaged exclusively in interstate commerce to stop at all county seats, when the convenience of its citizens has been amply provided for by other trains, it has power to prescribe a regula-

tion of commerce among the states, which shall prevent the running of through fast trains, freight or passenger, devoted exclusively to interstate commerce, by compelling them to stop at county seats to receive and let off passengers, and receive and discharge way freight; it has power to regulate interstate commerce so that interstate trains, both freight and passenger, shall be prevented from making the connections and time they would otherwise make without a shadow of pretense that even the convenience of the public is served by such regulation.

Quick transportation is at an end, except in so far as the sovereign states through which it passes shall graciously permit.

2. "There can be no doubt but that exclusive power has been conferred upon congress in respect to the regulation of commerce among the several states. The difficulty has never been as to the existence of this power, but as to what is to be deemed an encroachment upon it, for, as has been often said, "legislation may in a great variety of ways affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the constitution." *Hall* v. *De Cuir*, 95 U. S. 465–468.

In *Wabash, St. Louis and Pacific* v. *Illinois*, 118 U. S. 556, 7 Supreme Court Rep. 4, the following language is quoted from the opinion of the court in *Hall* v. *De Cuir:*

"The line which separates the powers of the states from this exclusive power of congress is not always distinctly marked; and oftentimes it is not easy to determine on which side a particular case belongs. Judges not unfrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary

rule by which the line must, in all cases, be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the particular rights involved. But we think it may safely be said that *state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of congress.* The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the state, but directly upon the business as it comes into the state from without, or goes out from within. *While it purports only to control the carrier, when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage.* * * * It was to meet just such a case that the commercial clause in the constitution was adopted. The river Mississippi passes through or along the borders of ten different states, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be governed within the state in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other, another. Commerce can not flourish in the midst of such embarrassments."

Now, in this case, while this act purports only to control the carrier while engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout all the

states through which this train runs. It compels it to stop its trains so that it can not make connections and can not make the time required by the necessities of interstate commerce, and destroys the purpose for which the train was put on. Its effect is to prevent the quick transportation required by the necessities of commerce between two of the most important cities in the Union.

3. *In this case the dividing line between the domain within which the state has power to regulate matters of internal police, and the domain of interstate commerce which has been exclusively confided by the constitution to Congress, is sharply defined.*

The act of the legislature of Illinois, as applied to an exclusively interstate commerce train, where the comfort and convenience of the people of Illinois is amply provided for by other trains, can not be sustained on the ground that it is within the power of the states to regulate matters of internal police within their limits.

It can not be contended that this act, as applied to this exclusively interstate train, affects the health, morals or safety of the public, or that it in the slightest degree tends to promote public peace, comfort or convenience.

The act of the legislature of Illinois in so far as it is applied to an exclusively interstate train, when the convenience of the people of the state is amply provided for by other trains, has no relation to the police power or the convenience of the people of Illinois.

It is an effort to apply an act, which would be valid as a regulation of trains beginning and ending in the state, to an exclusively interstate train. It is an inva-

sion of the domain of the national government by the state.

There is no question in the case as to the limit of the police power of the state.

4. It was said by the supreme court of Illinois in its opinion that appellant's "Knickerbocker special is not national in its character, requiring uniformity of regulations affecting all states alike."

If a fast through train between St. Louis and New York devoted exclusively to interstate commerce is not national in its character, then it would be difficult to conceive of a train that would be national in its character; and if the movement of such train can be regulated and the number of stops it shall make can be fixed by every state through which it passes, when the convenience of the people of such states is amply provided for by other trains, it is idle to speak of the exclusive power of congress to regulate interstate commerce.

5. *This case distinguished from L. S. & M. S. Ry. Co.* v. *The State of Ohio.*

This case was filed in this court on January 27, 1899. The case of *The L. S. & M. S. Ry. Co.* v. *The State of Ohio* was decided by this court February 20, 1899.

This case is distinguished from the Lake Shore case in the following particulars:

a. The statute of Ohio involved in that case provided:

"Section 3320. Each company shall cause three each way of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city or village containing over 3,000 inhabitants for a time sufficient to receive or let off passengers," etc.

The court held, in the opinion delivered by Mr. Justice Harlan:

"The statute does not stand in the way of the railroad company running as many trains as it may choose between Chicago and Buffalo without stopping at intermediate points, or only at very large cities on the route, if, in the contingency named in the statute, the required number of trains stop at each place containing 30 00 inhabitants long enough to receive and let off passengers."

The Illinois statute, on the other hand, requires *all trains* to stop at county seats long enough to receive and let off passengers, and the train to which this act is applied is exclusively an interstate train. This act does stand in the way of the railroad company running any trains without stopping at intermediate points.

6. *Where the line between the exclusive power of congress and the internal police power of the state is clearly defined, no question can arise as to the reasonableness of state enactment regulating commerce among the states.*

In the Lake Shore case it was said: "As the cases above cited show, and as appears from other cases, the reasonableness or unreasonableness of a state enactment is always an element in the general inquiry by the court whether such legislation encroaches upon national authority, or is to be deemed a legitimate exertion of the power of the state to protect the public interests or promote the public convenience."

While it is true the reasonableness or unreasonableness of a state enactment in the exercise of the police power will always be considered in determining whether it trenches upon the exclusive domain of national legislation, where the boundary line between

the power of the state and the power of the national congress is indistinct or not clearly defined, we respectfully submit that *where such boundary line is clear and sharply defined no question as to the reasonableness of a state enactment can arise.* The state can not invade the field in which the constitution has given to congress exclusive power, whether its regulations are reasonable or unreasonable.

In this case the line is so clearly drawn that there can be no confusion as to the boundary between the domain of exclusive congressional power and domain of state power.

It could not be contended that an act regulating rates within the state of Illinois could be extended to interstate commerce because such rates were reasonable. The line between the exclusive power of congress to regulate commerce among the states and the power of the states to regulate their internal affairs is drawn as distinctly in this case as it was in the *Wabash, St. Louis and Pacific R. Co.* v. *Illinois*, 118 U. S. 557.

It can not be claimed that the act of the legislature of Illinois, as applied to an exclusively interstate train, where the public convenience has been amply provided for by other trains, lies within the domain of state authority. It is wholly without the domain of state authority. It is a regulation of commerce among the states. In so far as it applies to exclusively interstate trains, the public convenience being already amply provided for by other trains, it is not an attempt to exercise the power of the state to provide for the safety, comfort or convenience of its people indirectly or incidentally affecting interstate transportation. Neither does the act seek to provide for the safety of interstate passengers within the state.

The application of this act to interstate transporta-

tion, as shown by the averments of the answer, has no relation to the safety, comfort or convenience of the people of Hillsboro or of the state of Illinois, but *directly and solely* affects interstate commerce and imposes burdens upon it, without regard to the safety, comfort or convenience of the people of the state. The state can pass no law directly regulating interstate commerce, whether such regulations are reasonable or unreasonable. It is not a question of their unreasonableness, but of the power of the state.

c. But further, this regulation is unreasonable. The answer in this case, the averments of which are admitted by the demurrer, shows clearly that the requirements of the Illinois act as applied to this case are wholly unreasonable; that the act as applied to exclusively interstate trains, when the convenience of the local community is amply provided for, does not add to the convenience of the local public, and greatly interrupts and burdens interstate travel between St. Louis and New York; that it has no appropriate relation to public convenience; that it goes beyond the necessities of the case, and in its application to exclusively interstate trains, when the public convenience of the people of Illinois is already amply provided for, is directed and only directed against interstate commerce.

d. The opinion in the Lake Shore case assumes four things:

"In what has been said we have assumed (1) that the statute is not in itself unreasonable; (2) that it has appropriate relation to public convenience; (3) that it does not go beyond the necessities of the case, and (4) it is not directed against interstate commerce."

Neither of these four assumptions apply to this case. As we have already shown, the statute in itself is

wholly unreasonable; in no respect promotes the convenience of the public; answers no public necessity, and imposes a great burden upon interstate travel between two of the most important cities in the Union. It is a needless intrusion upon the field committed by the constitution to congress.

As was said by Mr. Justice Miller in *Wabash, St. Louis & Pacific Ry. Co.* v. *Illinois*, 118 U. S. 557, 7 Sup. Ct. 4:

"It can not be too strongly insisted upon that the right of continuous transportation from one end of the country to the other is essential, in modern times, to that freedom of commerce from the restraints which the states might choose to impose upon it, that the commerce clause was intended to secure. This clause, giving to congress the power to regulate commerce among the states and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the constitution. *Cook* v. *Pennsylvania*, 97 U. S. 574; *Brown* v. *Maryland*, 12 Wheat. 446. And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the states which was deemed essential to a more perfect union by the framers of the constitution, if, at every stage of the transportation of goods and chattels through the country, the state within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation or taxation, *or any other restrictive regulation* interfering with and seriously embarrassing this commerce."

e. In discussing *Hall* v. *De Cuir*, in *Lake Shore & Michigan Southern* v. *State of Ohio*, it is said (Harlan, Justice):

"The Louisiana statute, as interpreted by the court, embraced every passenger carrier coming into the state. The Ohio statute does not interfere at all with the man-

agement of the defendant's trains outside of the state, nor does it apply to all its trains coming into the state." (19 Supreme Court Rep. 473.)

We submit that the Illinois statute embraces every passenger carrier coming into the state, and that it interferes with the management of defendant's train outside of the state and applies to all its trains coming into the state; it prevents it from making its connections and from making the time required by the necessities of commerce, and destroys wholly the purpose of the train, and that, too, when the public convenience is amply provided for by other trains.

f. In the opinion in the *Lake Shore* v. *The State of Ohio*, referring to the judgment in the *Wabash, St. Louis and Pacific Ry. Co.* v. *Illinois*, the court said, distinguishing that case from the Wabash case:

"In the case before us there is no attempt upon the part of Ohio to regulate the movement of the defendant company's interstate trains throughout the whole route traversed by them. It applies only to the movement of trains while within the state, *and to the extent simply of requiring a given number*, if so many are daily run, to stop at certain places long enough to receive and let off passengers."

As we have already pointed out, the Illinois statute *applies to all trains*, and, according to the averments of the answer, admitted by the demurrer, it prevents them from making their connections and the required time between St. Louis and New York, without in any degree contributing to the convenience of the people of Illinois, which is already amply provided for by other trains.

The Illinois act does affect transportation through a series of states. It prevents this Knickerbocker train

from making its connections. It, in effect, prevents the running of a through fast train between St. Louis and New York.

In *Gladson* v. *State of Minnesota*, 166 U. S. 427, it is said by the court:

"But in the case at bar the train in question ran wholly within the state of Minnesota, and could have stopped at the county-seat of Pine county without deviating from its course; and the statute of Minnesota expressly provides that this act shall not apply to through railroad trains entering this state from any other state, or to transcontinental trains of any railroad."

The contention in the case at bar is wholly without the field of controversy in the Gladson case. In this case the train did not run wholly within the limits of the state of Illinois, but entered from another state and passed through the state to the Atlantic.

The legislature of Minnesota did not attempt to do what it is contended here that the legislature of Illinois has done; that is, to regulate trains devoted exclusively to interstate commerce passing through a series of states, where the convenience of the people of the state is amply provided for and where such regulation has no appropriate relation either to the convenience of the people of the state of Illinois or to the safety of travelers upon the train.

In *Illinois Central* v. *State of Illinois*, 163 U. S. 142 (41:107), it was held that the state can do nothing which will directly burden or impede the interstate traffic of the company, or impair the usefulness of its facilities for such traffic, citing the following cases:

Dubuque & S. C. R. Co. v. *Richmond*, 86 U. S. 19, Wallace, 584, 589 (22:173, 176); *Stone* v. *Farmers'*

Loan & T. Co. ("Railroad Commission Cases"), 116 U. S. 307, 334 (29:636, 645); *Smith* v. *Alabama*, 124 U. S. 465 (31:508; 1 Inters. Com. Rep. 804).

Neither does this case come within that class where laws having for their object the personal security of passengers while traveling within their respective limits, from one state to another, have been held valid. *New York, New Haven and Hartford R. R. Co.* v. *People of the State of New York*, 165 U. S. 628; 41 Supreme Court Rep., L. C. P. Co., 853.

In this case the statute of Illinois, as extended to this exclusively interstate commerce train, has not the slightest relation to the safety or convenience of passengers on such train, and, as we have above seen, the convenience of the people of Illinois is already amply provided for.

Respectfully submitted,

JOHN T. DYE,
For Plaintiff in Error.

GEORGE F. MCNULTY,
Of Counsel.